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The Warwick Patent

The WARWICK PATENT

By Charles J. Hoadly, LL.D.

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Hartford Press
The Case, Lockwood & Brainard Company

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Charles Jeremy Hoadly

ON the nineteenth day of March in the year 1632, according to the present mode of beginning the year with January, Robert, Earl of Warwick, conveyed to sundry lords and gentlemen a considerable tract of land situated in America. The land was a part of the territory embraced in the Great Patent of New England granted by King James I., November 3, 1620, to forty persons, under the name of The Council established at Plymouth in the County of Devon, for the planting, ruling, ordering, and governing of New England in America. The original deed from Warwick was not brought to this country; it is not probable that it is now in existence, nor is any certified copy known, the most authentic being the copy of that copy which was shewed to the people in Connecticut by Mr. George Fenwick, found in 1661 by Governor Winthrop among Mr. Hopkins' papers in London, and now among the State archives.

In his grant to the patentees of Connecticut the Earl, who had been president of the Council before mentioned, did not state the source whence his title was derived, nor is it certainly disclosed in those portions of the records of that council now known to exist. Dr. Benjamin Trumbull, writing of the old patent, says in his History of Connecticut, that the

Council of Plymouth in 1630 granted this whole tract to the Earl of Warwick and it had been confirmed to him by a patent from King Charles I. He took the statement from an older writer, perhaps from Dr. Douglass' Summary, which was published in 1753, or, it may be, from Neal's History, published in 1720, but it is pretty certain that the only patent of Connecticut granted by a king of England was the charter to the Governor and Company granted by Charles II., dated April 23, 1662.

The grantees named in the Warwick patent or deed were: Lord Saye and Sele, Lord Brooke, Lord Rich, eldest son of the Earl of Warwick, Hon. Charles Fiennes of the family of Lord Saye and Sele, Sir Nathaniel Rich, one of those named in the great patent for New England, who died in 1636, Sir Richard Saltonstall, one of the Massachusetts patentees 1629, Richard Knightly, who died in 1639, John Pym, John Hampden, John Humphrey also one of the Massachusetts patentees, and Herbert Pelham.[1] From the commission given to the younger Winthrop, July 18, 1635, we learn the names of four more of the associates: Henry Lawrence, Henry Darley, Sir

[1] Robert, Earl of Warwick, William, Viscount Saye and Sele, Robert, Lord Brooke, Sir Nathaniel Rich, and John Pym, were interested in the Bahamas. Brown's *Genesis of the United States*, 886. Lords Saye and Sele and Brooke were also interested in New Hampshire. Hutchinson's *History of Massachusetts*, I, 104. Ed. 1764.

Arthur Haselrig, and George Fenwick. Lion Gardiner names also Sir Matthew Boynton. Edward Hopkins seems to have been of the company, as, perhaps, were also Robert Barrington and Philip Nye.

Of these, John Humphrey, Herbert Pelham, George Fenwick, and Edward Hopkins came to America after the date of the Warwick patent, but only the two latter came to Connecticut; Sir Richard Saltonstall came over in 1630, but returned the next year;[2] Charles Fiennes is supposed to have made a brief visit to Massachusetts in 1630, as his name is signed to the address from on board the Arabella, of April 7, in that year; and, possibly,[3] John Hampden had visited Plymouth in 1622–3. Others of the patentees contemplated emigration, as Sir Matthew Boynton, who sent over cows, sheep, and goats, with two servants, and purposed to bring a great family.

One Mr. Jessup was the clerk of the patentees. The Warwick patent was simply a deed of feoffment of certain lands. It did not purport to convey any powers of government nor to create the patentees a corporation; it was not in the power of the Earl of Warwick to do either. The grantees were simply joint tenants of the lands conveyed. As such they

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[2] It is not unlikely that Saltonstall's representation of the fruitfulness of the Connecticut valley had considerable to do with the grant by the Earl of Warwick. Brodhead's *History of the State of New York*, I, 211.

[3] Quite doubtful.

acted when six of them July 7, 1635, in their own names and in the name of the rest of the company, concluded certain articles with John Winthrop the younger. So they did when on the 18th of the same month five of them, in their own names and in the name of the right honorable Viscount Saye and Sele, Robert, Lord Brooke, and the rest of their company, commissioned Winthrop as governor of the river Connecticut with the places adjoining thereto for the space of one whole year. There was no recital of a vote for the purpose, nor was there affixed a common seal, but only their five individual seals impressed on one large piece of wax.

In the year 1635 the attention of many was turned to New England, and the Warwick grantees took steps to colonize their territory. The first attempt was by Sir Richard Saltonstall, who sent over a bark of forty tons, the Christian (or Christopher), of London, John White master, with twenty servants under the superintendence of Francis Stiles.[4] The ship sailed the latter part of March, and arrived at Boston June 16, 1635. After a stay of about ten days there, Stiles and his men sailed for what is now Windsor, where they were to impale 2,000 acres for Sir Richard, but they were interfered with by Mr. Ludlow and others from Dorchester, who were pur-

[4] Their names may be seen in Massachusetts Historical Society *Collections*, 2d Series, VIII, 252, or Drake's *Founders of New England*, 14.

posing to make a settlement. Stiles returned to England to report. In July Barnabas Davis sailed in the Blessing for Boston, whence a few days after his arrival he came on foot to Connecticut as agent for William Woodcock, for whom Stiles was to impale 400 acres and build a house. Finding Stiles gone Davis also returned to England with letters from Mr. Hooker to Lord Saye and to Mr. Woodcock.

The following Articles were made between the Right Honorable the Lord Viscount Saye and Sele, Sir Arthur Haselrig, Baronet, Sir Richard Saltonstall, Knight, Henry Lawrence, Henry Darley, and George Fenwick, Esquires, on the one part, and John Winthrop, Esq., the younger, of the other, the 7 July, 1635.

First, That we, in our names and the rest of the company, do by these presents appoint John Winthrop the younger Governor of the river Connecticut in New England, and of the harbor and places adjoining, for the space of one year from his arrival there. And the said John Winthrop doth undertake and covenant for his part, that he will with all convenient speed repair to those places and there abide as aforesaid for the best advancement of the company's service.

Secondly, That so soon as he comes to the Bay he shall endeavor to provide able men, to the number of fifty at the least, for making of fortifications and building of houses at the river Connecticut and the

harbor adjoining: first for their own present accommodations, and then such houses as may receive men of quality; which latter houses we would have to be builded within the fort.

Thirdly, That he shall employ those men, according to his best ability, for the advancement of the company's service, especially in the particulars above mentioned, during the time of his government; and shall also give a true and just account of all the monies and goods committed to his managing.

Fourthly, That for such as shall plant there now in the beginning, he shall take care that they plant themselves either at the harbor or near the mouth of the river, that these places may be the better strengthened for their own safety; and to that end that they also set down in such bodies together as they may be most capable of an entrenchment: provided that there be reserved unto the fort for the maintenance of it, one thousand or fifteen hundred acres, at least, of good ground as near adjoining thereunto as may be.

Fifthly, That forasmuch as the service will take him off from his own employment, the company do engage themselves to give him a just and due consideration for the same.

In the same summer of 1635, Lion Gardiner, engineer and master of works of fortification in the legers of the Prince of Orange in the Low Countries, through the persuasion of Mr. John Davenport, Mr. Hugh Peters, with some other well affected Englishmen of

Rotterdam, made an agreement with the forenamed Mr. Peters for £100 per annum for four years, to serve the company of patentees, namely the Lord Saye, the Lord Brooke, Sir Arthur Haselrig, Sir Matthew Boynton, Sir Richard Saltonstall, Esquire Fenwick, and the rest of their company. He was to serve them only in the drawing, ordering, and making of a city, towns, or forts of defence.

Sergeant Gardiner came from Holland to London, and thence to New England in the Bacheler, a small north-sea boat of twenty-five tons. With him came his wife Mary, their maid servant Eliza Coles, and William Job or Jope, his master workman. Except the master and crew, eight in all, there were no other passengers. The vessel brought provisions, iron work, and other things useful for the contemplated fortification; she arrived at Boston November 28, 1635.

In October preceding, in the Abigail, came John Winthrop the younger with his commission as governor, men and ammunition, and £2,000 in money, to begin a plantation at the mouth of the Connecticut. With him also came Hugh Peter and either in the same ship or in the Defence which arrived about the same time, Henry Vane. Before the arrival of Gardiner, Winthrop had sent a bark of 30 tons and about twenty men, carpenters and other workmen under command of Lieutenant Gibbons and Sergeant Willard, with all needful provisions, to take possession and to begin some buildings. They were none too

early, for the Dutch about this time sent a sloop to seize the river's mouth, to which they pretended some claim, but were not suffered to land.

The Dutch had in 1633 established a small fort at Hartford which they continued to hold for about 20 years, and they challenged the territory to the west bank of the Connecticut as a part of New Netherlands, though the English repudiated their pretensions. Our ancestors were Englishmen and settling where they did had no idea of changing their allegiance. In 1641, Sir William Boswell, the British resident at the Hague, had advised that the English at Connecticut should "not forbear to put forward their plantations and crowd on, crowding the Dutch out of those places," and this policy was pursued from the first settlement here.

In the summer and autumn of 1635, a number of persons from Dorchester and some other places in Massachusetts began settlements in Windsor, Hartford, and Wethersfield. They were attracted by the superior fertility of the lands in the valley of the Connecticut, and the milder climate. They did not come hither under the encouragement of the patentees but were rather intruders upon their territory, and to them the agents of the patentees addressed this letter:

Dear Friends: Whereas there is a patent lately granted to certain persons of quality (friends to New England) of the River of Connecticut with the places adjoining, together with liberties and prerogatives as

in such cases are usual, so that, by virtue thereof, they conceive they have full power, right and authority, to govern and dispose of all persons and affairs that shall fall within the circuit and limits of the said grant: it is therefore conceived requisite, by the agents of the said patentees now present in New England, to lay forth the claims and rights of the said personages to such as here in New England it may concern: to the end, if any thoughts or designs of others have been heretofore, or may be hereafter, prejudicial or injurious to the right or possessions of the said patentees, they may so far take notice of the same as, whatever hath happened in the by past, or may befall for the future, any way derogating from the former claims, may seasonably meet with a loving and friendly prevention; at least, every one that seems to be interested herein may declare and give reasons of their titles and pretensions thereto, that so, in so weighty an enterprise, the business may be carried to an end with order, justice, peace, and joint power and strength for the accomplishing of the same and fruition of it with blessing and love.

Upon consideration of the premises we conceive that the present face of affairs of Connecticut, as it now appears, will admit or require a punctual and plain answer to these necessary queries from the towns that are lately removed from the Massachusetts Bay to take up plantation within the limits of the foresaid patent.

Imprimis, whether they do acknowledge the right and claims of the said persons of quality, and in testimony thereof will and do submit to the counsel and direction of their present governor, Mr. John Winthrop the younger, established by commission from them in those parts.

Secondly, under what right and pretence they have lately taken up their plantations within the precincts forementioned, and what government they intend to live under, because the said country is out of the claim of the Massachusetts patent.

Item, what answer and reasons we may return to the said patentees, if the said towns intend to intrench upon their rights and privileges and justify the same.

These things we tender to you as our truly respected brethren, and do desire you earnestly to take them into your serious and Christian consideration, with as much secrecy as may be, so that we may receive your speedy and loving resolutions, that, by the present opportunities which now present themselves for returning your answers into England, we discharge our trust, which we have lately been put in mind of. And thus we commend you to the guidance and protection of our good God, and remain, your loving friends,

H. Vane Jun.
John Winthrop,
Hugh Peter.

To our loving and much respected friends, Mr. Ludlow, Mr. Maverick, Mr. Newberry, Mr. Stough-

ton, and the rest of our friends engaged in the business of Connecticut plantations in the town of Dorchester.

The letter seems to have been thus addressed because the company which came to Windsor was the most numerous of those which came to the three river towns in 1635, or because they had interfered with the lands which one of the patentees was proposing to take up, or because Mr. Ludlow was the most prominent person engaged in the enterprise of planting these towns.

Sir Richard Saltonstall wrote to the younger Winthrop a letter expressing his dissatisfaction with the wrong done to him through Francis Stiles by the Dorchester men, and Lord Saye wrote Governor Winthrop of Massachusetts expressing his opinion that those up the river had carved largely for themselves, which he thought they would after repent when they saw what helps they had deprived themselves of. Lord Brooke also wrote to him on the subject.

The Warwick patent being, as has already been said, only a conveyance of land and not an instrument of government: as government of some kind was a matter of necessity, and as those already gone to Connecticut were but a small part of those proposing to do so in the then coming summer: in consequence of the letter before cited and a conference of Mr. Vane and the other agents of the patentees with the magistrates of Massachusetts and the intending

emigrants, the General Court of Massachusetts at their session March 3, 1636, issued this commission:[5]

Whereas upon some reason and grounds, there are to remove from this our commonwealth and body of the Massachusetts in America divers of our loving friends, neighbors, freemen, and members of Newtown, Dorchester, Watertown, and other places, who are resolved to transplant themselves and their estates unto the river of Connecticut, there to reside and inhabit, and to that end divers are there already and divers others shortly to go: we in this present court assembled, on the behalf of our said members, and John Winthrop, jun., Esq., governor appointed by certain noble personages and men of quality interested in the said river, which are yet in England, on their behalf, have had a serious consideration thereon, and think it meet that where there are a people to sit down and cohabit there will follow, upon occasion, some cause of difference, as also divers misdemeanors, which will require a speedy redress: and in regard of the distance of place this state and government cannot take notice of the same as to apply timely remedy or to dispense equal justice to them and their affairs as may be desired; and in regard the said noble personages and men of quality have something engaged themselves and their estates in the planting of the said river, and by virtue of a patent do require jurisdiction of the said place and people, and neither

[5] *Records of the Massachusetts Bay*, 1, 170.

the minds of the said personages (they being writ unto) are as yet known, nor any manner of government is yet agreed on, and there being a necessity, as aforesaid, that some present govemment may be observed; we therefore think it meet, and so order, that Roger Ludlow, Esq., William Pynchon, Esq., John Steel, William Swaine, Henry Smith, William Phelps, William Westwood, and Andrew Ward, or the greater part of them, shall have full power and authority, to hear and determine in a judicial way, by witnesses upon oath examine, within the said plantation, all those differences which may arise between party and party, as also, upon misdemeanor to inflict corporal punishment or imprisonment, to fine and levy the same if occasion so require, to make and decree such orders, for the present, that may be for the peaceable and quiet ordering the affairs of the said plantation, both in trading, planting, building, lots, military discipline, defensive war (if need so require), as shall best conduce to the public good of the same, and that the said Roger Ludlow, William Pynchon, John Steele, William Swaine, Henry Smith, William Phelps, William Westwood, Andrew Warner, or the greater part of them, shall have power, under the greater part of their hands, at a day or days by them appointed, upon convenient notice, to convene the said inhabitants of the said towns to any convenient place that they shall think meet, in a legal and open manner, by way of court, to proceed in executing the

power and authority aforesaid; and in case of present necessity, two of them joining together, to inflict corporal punishment upon any offender if they see good and warrantable ground so to do. Provided always, that this commission shall not extend any longer time than one whole year from the date thereof, and in the meantime it shall be lawful for this court to recall the said presents if they see cause, and if so be there may be a mutual and settled government condescended unto by and with the good liking and consent of the said noble personages, or their agent, the inhabitants, and this commonwealth; provided also, that this may not be any prejudice to the interest of those noble personages in the said river and confines thereof within their several limits.

Although Massachusetts had no right to exercise powers of government outside the limits of her patent, this commission was readily submitted to, because the then inhabitants of Connecticut, being but few in number, were not yet in a capacity to erect a form of government for themselves; which if they had done, in strictness of law it would have been no more a legal government than the commission, since it was not derived from the crown, the fountain of power and only source of jurisdiction.

The first court under this commission was held at Hartford April 26, 1636, and the first business recorded relates to a complaint that Henry Stiles or some of the servants of Sir Richard Saltonstall had traded a gun with the Indians for corn.

The names of William Pynchon and Henry Smith, of Springfield, are found in the commission, for that town was at first regarded as within the limits of the Connecticut patent. We are not now concerned with the causes of its secession or with the bounds claimed by the patentees, remarking only that in October 1639, Fenwick, as their agent, wrote to Governor Winthrop of Massachusetts, that whatsoever was concluded between that colony and the towns above (that is, Springfield, Windsor, Hartford, and Wethersfield), about bounds, without the patentees, he should account invalid and must protest against.

Saybrook was not under the government established by the commission, nor did the younger Winthrop during the few months he remained there as governor apparently attempt to exercise any authority outside the limits of that plantation. All the buildings within Saybrook fort were destroyed by a fire in the winter of 1647–8 in which the early records are supposed to have perished. Saybrook seems to have been an independent community until about the time of the confederation of the United Colonies in 1643. However, before 1639 it had a very small population, few, if any, of its inhabitants not being in the service of the company or connected with the fort.[6]

In May 1636, Fenwick came over. About the

[6] Very likely its population, all told, did not exceed 50.

first of July[7] he set out on horseback with Hugh Peters for the upper towns on the river and thence by water to Saybrook. By him Vane wrote to the younger Winthrop that, having been chosen governor of Massachusetts and Mr. Fenwick having come into the country, he should no ways interest himself in the matters of Connecticut any further than as a public person of Massachusetts. Winthrop, whose wife had not accompanied him to Saybrook, probably finally left that place with Fenwick, who returned to England in the autumn of that year. Lion Gardiner then had charge of the fort, and he wrote to Winthrop: "It seems that we have neither masters nor owners, but are left like so many servants whose masters are willing to be quit of them." Indeed, the patentees were discouraged. The restrictions placed by the government upon emigration had prevented the sending of so many men as had been contemplated, and the plague visiting London in the summer of 1636 scattered those interested into several parts, so that moneys did not come in to enable Mr. Hopkins, who managed that business, to send further supplies. I suppose nothing was sent by the patentees after the summer of 1636. The Pequot war soon followed, and the little band at Saybrook felt their weakness and isolation, so that John Higginson, the chaplain

[7] June, Winthrop's *History of New England*, Savage's edition, 1, 470; July 1, Massachusetts Historical Society *Collections*, 3d Series, vi, 582.

there, out of the bitterness of his heart at their apparent desertion, wrote to the elder Winthrop, "O that the heavy curse of Meroz may never fall upon any of the lords."

That the party which came to Connecticut with Hooker in the summer of 1636 did so under the encouragement of the patentees can admit, as I think, of no doubt. Hooker corresponded with Lord Saye and Sele, and Sir Richard Saltonstall had proposed to build at Hartford and join with Mr. Hooker, who, as he knew, was intending to remove thither.

Two of the patentees, Lord Saye and Sele and Sir Richard Saltonstall, in 1642, showed their interest in the colony by the complaints which they made to the Dutch ambassador at London of molestations and insolences suffered by the English on the Connecticut from the Dutch. The Earl of Warwick did the same.[8] The letter from Connecticut to Lord Saye and Sele of June, 1661, expressly refers to the former encouragements that our fathers and some of their then surviving associates received from his honor to transplant themselves and families into these inland parts of this vast wilderness, where his honor was interested by virtue of patent power and authority.

How the people of the three towns up the river were governed the first year has been shown. After the expiration of the commission there appears on the

[8] *Documents relative to the Colonial History of New York*, 1, 127, 128, 135.

records a new form of government called the General Court. Hitherto only the magistrates named in the commission had held the courts, but now, besides the magistrates, were present Committees or deputies from the several towns. The first of these general courts was held at Hartford May 1, 1637. Just how this was brought about is not so clear as is the fact that the government of those towns continued, as it had been from the beginning, a federated government; they were never in a state of independence one of another. On the 14th of January, 1639, the inhabitants and residents of the three towns established for themselves a Constitution or form of government well adapted to their circumstances, under which they, with the towns afterward settled under combination with them, continued to live until, in 1662, they received from the crown a charter by which they were recognized a government in law as well as in fact.

So, too, those who settled New Haven in 1638 did it with the knowledge and assent of the patentees. We have already seen that Davenport was one of those by whose persuasion Gardiner entered into the service of the company. He was also a friend of Lord Saye and Sele. Hopkins, who in behalf of the patentees sent supplies to Saybrook, had married a daughter of Eaton's wife and came to America with Davenport and Eaton, although he himself took up his residence at Hartford. Guilford assuredly was settled with the knowledge, at least, of the patentees, for the first plant-

ers of that town came over with Fenwick on his second visit in 1639. Guilford, though proposing to settle in the southerly part of New England about Quinnipiack, owed no allegiance to New Haven; neither did Milford. Those three towns were all on an equal footing: neither had authority over another; each established a government for itself and maintained a separate and independent existence until 1643. They had not been associated together before their emigration, nor were they settled simultaneously, like the river towns. The leaders of New Haven were Londoners and wished to found a city for trade; the settlers of Guilford and Milford were agriculturists and they chose lands which were better adapted for husbandry than was that of New Haven. In the jurisdiction of New Haven the organization of the towns preceded that of the colony, which, as we have seen, was not the case in Connecticut.[9]

On the eve of the projected planting of Connecticut Lord Saye, Lord Brooke, and other persons of quality submitted to Massachusetts certain proposals as conditions of their removing to New England, which are subjoined with the answers thereto:

Demand 1. That the commonwealth should consist of two distinct ranks of men, whereof the one

[9] The supreme court of this state in Webster v. Harwinton, 34 *Connecticut Reports*, 131, held that towns have no original or inherent power. But the court did not take into account anything prior to the constitution of 1639.

should be, for them and their heirs, gentlemen of the country, the other for them and their heirs, freeholders.

Answer. Two distinct ranks we willingly acknowledge, from the light of nature and scripture: the one of them called Princes or Nobles, or Elders (amongst whom gentlemen have their place), the other the people. Hereditary dignity or honors we willingly allow to the former, unless, by the scandalous and base conversation of any of them, they become degenerate. Hereditary liberty, or estate of freemen, we willingly allow to the other, unless they also, by some unworthy and slavish carriage, do disfranchise themselves.

Dem. 2. That in these gentlemen and freeholders, assembled together, the chief power of the commonwealth shall be placed, both for making and repealing laws.

Ans. So it is with us.

Dem. 3. That each of these two ranks should, in all public assemblies, have a negative voice, so as without a mutual consent nothing should be established.

Ans. So it is agreed among us.

Dem. 4. That the first rank, consisting of gentlemen, should have power, for them and their heirs, to come to the parliaments or public assemblies, and there to give their free votes personally; the second rank of freeholders should have the same power for them and their heirs of meeting and voting, but by their deputies.

Ans. Thus far this demand is practiced among us. The freemen meet and vote by their deputies; the other rank give their votes personally, only with this difference, there be no more of the gentlemen that give their votes personally but such as are chosen to places of office, either governors, deputy governors, councellors, or assistants. All gentlemen in England have not that honor to meet and vote personally in parliament, much less all their heirs. But of this more fully, in answer to the ninth and tenth demand.

Dem. 5. That for facilitating and dispatch of business, and other reasons, the gentlemen and freeholders should sit and hold their meetings in two distinct houses.

Ans. We willingly approve the motion, only as yet it is not so practiced among us, but in time the variety and discrepancy of sundry occurrences will put them upon a necessity of sitting apart.

Dem. 6. That there shall be set times for these meetings, annually or half yearly, as shall be thought fit by common consent, which meetings should have a set time for their continuance, but should be adjourned or broken off at the discretion of both houses.

Ans. Public meetings, in general courts, are by charter appointed to be quarterly, which, in this infancy of the colony, wherein many things frequently occur which need settling, hath been of good use, but when things are more fully settled in due order, it is likely that yearly or half yearly meetings will be suf-

ficient. For the continuance or breaking up of these courts, nothing is done but with the joint consent of both branches.

Dem. 7. That it shall be in the power of this parliament, thus constituted and assembled, to call the governor and all public officers to account, to create new officers, and to determine them already set up; and, the better to stop the way to insolence and ambition, it may be ordered that all offices and fees of office shall, every parliament, determine, unless they be new confirmed the last day of every session.

Ans. This power to call governors and all officers to account, and to create new and determine the old, is settled already in the general court or parliament, only it is not put forth but once in the year, viz., at the great and general court in May, when the governor is chosen.

Dem. 8. That the governor shall ever be chosen out of the rank of gentlemen.

Ans. We never practice otherwise, choosing the governor either out of the assistants, which is our ordinary course, or out of approved known gentlemen, as this year Mr. Vane.[10]

Dem. 9. That, for the present, the Right Honorable the Lord Viscount Say and Seale, the Lord Brook, who have already been at great disbursements for the public works in New England, and such other gentlemen of approved sincerity and worth as they, before

[10] 1636.

their personal remove, shall take into their number, should be admitted, for them and their heirs, gentlemen of the country. But for the future, none shall be admitted into this rank but by the consent of both houses.

Ans. The great disbursements of those noble personages and worthy gentlemen we thankfully acknowledge, because the safety and presence of our brethren at Connecticut is no small blessing and comfort to us. But, though that charge had never been disbursed, the worth of the honorable persons named is so well known to all, and our need of such supports and guides is so sensible to ourselves, that we do not doubt the country would thankfully accept it, as a singular favor from God and from them, if he should bow their hearts to come into this wilderness and help us. As for accepting them and their heirs into the number of gentlemen of the country, the custom of this country is, and readily would be, to receive and acknowledge, not only all such eminent persons as themselves and the gentlemen they speak of, but others of meaner estate, so be it is of some eminency, to be for them and their heirs, gentlemen of the country. Only, thus standeth our case: Though we receive them with honor and allow them preëminence and accommodations according to their condition, yet we do not, ordinarily, call them forth to the power of election, or administration of magistracy, until they be received as members into some of our churches;

a privilege which we doubt not religious gentlemen will willingly desire, (as David did in Psal. xxvii, 4.) and christian churches will as readily impart to such desirable persons. Hereditary honors both nature and scripture doth acknowledge, (Eccles. xix, 17), but hereditary authority and power standeth only by the civil laws of some commonwealths; and yet, even amongst them, the authority and power of the father is no where communicated together with the honors unto all his posterity. Where God blesseth any branch of any noble or generous family with a spirit and gifts fit for government, it would be a taking of God's name in vain to put such a talent under a bushel, and a sin against the honor of magistracy to neglect such in our public elections. But if God should not delight to furnish some of their posterity with gifts fit for magistracy, we should expose them rather to reproach and prejudice, and the commonwealth with them, than exalt them to honor if we should call them forth, when God doth not, to public authority.

Dem. 10. That the rank of freeholders shall be made up of such as shall have so much personal estate there as shall be thought fit for men of that condition, and have contributed some fit proportion to the public charge of the country, either by their disbursements or labors.

Ans. We must confess our ordinary practice to be otherwise. For, excepting the old planters, i. e.

Mr. Humphry, who himself was admitted as an assistant at London, and all of them freemen, before the churches here were established, none are admitted freemen of this commonwealth but such as are first admitted members of some church or other in this country, and, of such, none are excluded from the liberty of freemen. And out of such only, I mean the more eminent sort of such, it is that our magistrates are chosen. Both which points we should willingly persuade our people to change, if we could make it appear to them that such a change might be made according to God; for, to give you a true account of the grounds of our proceedings herein, it seemeth to them, and also to us, to be a divine ordinance (and moral) that none should be appointed and chosen by the people of God, magistrates over them, but men fearing God (Ex. xviii, 21), chosen out of their brethren (Deut. xvii, 15), saints (1 Cor. vi, 1). Yea the apostle maketh it a shame to the church, if it be not able to afford wise men from out of themselves, which shall be able to judge all civil matters between their brethren (ver. 5). And Solomon maketh it the joy of a commonwealth, when the righteous are in authority, and the calamity thereof, when the wicked bear rule. Prov. xxix, 2.

Obj. If it be said, there may be many carnal men whom God hath invested with sundry eminent gifts of wisdom, courage, justice, fit for government.

Ans. Such may be fit to be consulted with and

employed by governors, according to the quality and use of their gifts and parts, but yet are men not fit to be trusted with place of standing power or settled authority. Ahithophel's wisdom may be fit to be heard (as an oracle of God) but not fit to be trusted with power of settled magistracy, lest he at last call for 12,000 men to lead them forth against David, 2 Sam. XVII, 1, 2, 3. The best gifts and parts under a covenant of works (under which all carnal men and hypocrites be) will at length turn aside by crooked ways to depart from God, and, finally, to fight against God, and are therefore, herein, opposed to good men and upright in heart. Psal. CXXV, 4, 5.

Obj. If it be said again, that then the church estate could not be compatible with any commonwealth under heaven.

Ans. It is one thing for the church, or members of the church, loyally to submit unto any form of government, when it is above their calling to reform it, another thing to choose a form of government and governors discrepant from the rule. Now if it be a divine truth, that none are to be trusted with public permanent authority but godly men, who are fit materials for church fellowship, then from the same grounds it will appear that none are so fit to be trusted with the liberties of the commonwealth as church members. For the liberties of the freemen of this commonwealth are such as require men of faithful integrity to God and the state, to preserve the same.

Their liberties, among others, are chiefly these: 1, To choose all magistrates, and to call them to account at their general courts. 2, To choose such burgesses, every general court, as with the magistrates shall make or repeal all laws. Now both these liberties are such as carry along much power with them, either to establish or subvert the commonwealth, and therewith the church, which power, if it be committed to men not according to their godliness, which maketh them fit for church fellowship, but according to their wealth, which, as such, makes them no better than worldly men, then, in case worldly men should prove the major part, as soon they might do, they would as readily set over us magistrates like themselves, such as might hate us according to the curse, Levit. xxvi, 17, and turn the edge of all authority and laws against the church and the members thereof, the maintenance of whose peace is the chief end which God aimed at in the institution of magistracy. 1 Tim. ii, 1, 2.

The answers to these demands were written in 1636 by Mr. Cotton after consultation with some of the leading men. Both are here inserted, because they give some of the ideas upon government entertained by the patentees, and because the general court of Connecticut on the 27th of March, 1643, took the following action:

The court consenteth that the former answer shall be returned to the propositions made by the lords, the particulars at present not coming to view; and if

it please Mr. Fenwick to join with the plantations it shall not infringe any of his privileges which belong to him.

Had the particulars of the propositions come to their view we may safely presume that the answers given to them by the Connecticut general court would have differed considerably from those cited above. Confining the rank of freemen to church members only was not consonant to the polity adopted by Connecticut, though it was insisted on at New Haven, and when the former absorbed the latter Davenport wrote that in New Haven colony Christ's interest was miserably lost. However, it may be made a question whether it would have proved an unmixed blessing had the patentees actually come over and settled here.

Plymouth, Massachusetts, Connecticut, and New Haven confederated together in May, 1643, under the title of The United Colonies of New England. The object was, to "enter into a firm and perpetual league of friendship and amity, for offence and defence, mutual advice and succor, upon all just occasions, both for preserving and propagating the truth and liberties of the gospel and for their own mutual safety and welfare." The articles of confederation were signed on the part of Connecticut by George Fenwick and Edward Hopkins, thus representing also the interest of the patentees. Mr. Fenwick, soon after his arrival in 1639, had expressed his willingness, with reservations as to boundaries, that the colony of Connecticut

should proceed in the matter. The first movement toward this confederation had been made by Connecticut in 1638, but it proved abortive because of apprehension that Massachusetts was inclined to subordinate the smaller colony to the larger one. However, in 1643 the condition of public affairs seemed to indicate the expediency, if not necessity, of the confederation. The combination was of more importance to the two western colonies, because they had no royal charter and because the territory occupied by them was claimed as a part of New Netherlands by the Dutch, who still retained the small fort they had built at Hartford. Now the third article of confederation provided for the peculiar jurisdiction among themselves as one entire body of each of the confederating colonies.

Similar reasons to those which induced the confederation between the colonies had shortly before caused a combination to be entered into between New Haven, Stamford, Guilford, and Southold on Long Island, to which in October, 1643, Milford was joined; and thus was formed the Colony or Jurisdiction of New Haven, The plantation of New Haven had purchased Totoket, now Branford, but it was not yet planted. Beyond the towns named the colony of New Haven was circumscribed by the colony of Connecticut, which claimed the remainder of the territory comprising the present State. Connecticut's claim was based upon conquest and purchase from the Indians.

When the four years for which he had engaged to serve the company had expired Lion Gardiner removed to the island he had purchased, and which still bears his family name. In the same year, 1639, George Fenwick came over again and resided at Saybrook as agent for the patentees. With him came some who settled at Saybrook. He expected others of those interested in the patent to come and join him the next spring. The Long Parliament, which met in the autumn of 1640, setting upon a general reformation both of church and state caused all men to stay in England in expectation of a new world. A final stop was put to emigration. After waiting until there was no longer hope of seeing the lords and gentlemen as planters here, and the prospect of a rising city at the mouth of the river had vanished, Fenwick was willing to dispose of his interest and return to his native country.

His relations with the colony of Connecticut had always been friendly. In October, 1639, a few months after his arrival, he had been put in nomination for election as a magistrate of Connecticut, provided he became a freeman. As no church was gathered at Saybrook, his wife had joined that at Hartford and presented their child for baptism. At Hartford dwelt his friend Edward Hopkins, who from 1639 until his departure from the country was in the magistracy of Connecticut, most of the time either as governor or deputy governor. At Hartford also settled

his brother-in-law, John Cullick, and became a prominent citizen.

A committee consisting of Governor Hopkins, Deputy Governor Haynes, Capt. Mason, Mr. Steele, Mr. Gaylord, and James Boosy, was appointed by the Connecticut general court, at the session of October 25, 1644, to treat with Mr. Fenwick concerning the settling of the river's mouth, to know upon what terms we stand with him in that respect, and also to consider what they think meet to be done for matter of fortification there, and to take the first opportunity they could for the issuing of it, and to determine and conclude with him as they should judge meet. By articles agreed upon between the parties December 5, 1644, Mr. Fenwick conveyed to the use of the jurisdiction of Connecticut the Fort at Saybrook, with certain appurtenances mentioned, and it was also agreed that all the land upon the river of Connecticut should belong to the said jurisdiction of Connecticut; all which Mr. Fenwick engaged himself to make good to the jurisdiction aforesaid against all claims that might be made by any other to the premises, by reason of any disbursements made upon the place. This is all that Mr. Fenwick conveyed to Connecticut.[11] He promised, indeed, that all the lands from

[11] If it be objected that the agreement with Fenwick was defective in form, not being under seal, the answer is, that it appears to have been satisfactory to Connecticut. Fenwick was chosen into the magistracy in 1644 and 1645.

Narragansett River to the fort of Saybrook, mentioned in a patent granted by the Earl of Warwick to certain nobles and gentlemen, should fall in under the jurisdiction of Connecticut, if it came into his power: a contingency which does not appear to have happened.

Here is a difficulty: Why were not "the lands from Narragansett River to the fort at Saybrook" as much in Fenwick's power as the lands to the west of Connecticut River? They were equally included in Warwick's conveyance. Why was it that all of the earlier settlements were made west of Connecticut River? Doubtless physical geography was to some extent a determinant factor, but why did Eaton's company select New Haven instead of New London, when both places were vacant and the latter with its magnificent harbor was quite as well, if not better known than the former? Pequot River was designated as a place which might be selected for fortification by Winthrop in behalf of the patentees. Was the decision of Eaton's company to settle where they did influenced at all by Hamilton's claim and the fact that the marquis was not in political sympathy with them?

The patent was not assigned to Connecticut. It was not in Fenwick's power to do it. The patentees, as we have seen, were not a corporation and so could not by a vote authorize an agent to convey: they were joint tenants, and the signature of each one was

necessary to transfer his interest, and it was not practicable to obtain these, the parties being numerous and scattered. The patentees simply abandoned their claim, leaving Connecticut in possession of the greater part of it together with the fort, which might be called a key to the situation.

We are told on good authority that Fenwick gave to Connecticut the colony seal, of which the first use known to us is of the date of October 27, 1647. It may have been brought over by Fenwick in 1639, when the lords and gentlemen were still in expectation of establishing a colony on the territory covered by their patent.

All this time the colonies of Connecticut and New Haven were without a charter from the king or parliament of England. They were only governments *de facto*. In November, 1643, the lords and commons assembled in parliament passed an ordinance "whereby Robert earl of Warwick was made Governor in Chief and Lord High Admiral of all those islands and plantations, inhabitated, planted, or belonging to any of his majesty's the king of England's subjects, within the bounds and upon the coasts of America, and a committee appointed to be assisting unto him, for the better governing, strengthening, and preservation of the said plantations, but chiefly for the advancement of the true protestant religion and further spreading of the gospel of Christ among those that yet remain there in great and miserable blindness and ignorance."

Among the commissioners we find the names of Lord Saye and Sele, Sir Arthur Haselrig, Baronet, and John Pym, who were of the Connecticut patentees. George Fenwick was of the number in 1646. From this commission Rhode Island received a patent in March, 1644. Judging the season opportune, the General Court of New Haven colony in October, 1644, saw cause to join with Connecticut to procure a patent from the parliament for these parts, and for that purpose desired Mr. Gregson to undertake the voyage and business. Gregson sailed from New Haven in January, 1646, but the ship was never heard of after and New Haven suffered a loss from which she did not recover for a long time. In the New Haven Case Stated, this action of that colony is said to have been taken "with the consent and desire of Connecticut to concur with New Haven therein," and that the proposed patent was to provide "for common privileges to both in their distinct jurisdictions." There is nothing found in the Connecticut records confirming these statements, but in May, 1645, Governor Haynes, deputy governor Hopkins, Mr. Fenwick, Mr. Whiting, and Mr. Welles were desired to agitate the business concerning the enlargement of the liberties of the patent for this jurisdiction, which they had liberty to proceed in at such reasonable charge as they should judge meet. In the following July it was ordered that there should be a letter directed from the court to desire Mr. Fenwick, if his occasions would permit, to go for Eng-

land to endeavor the enlargement of patent, and to further other advantages for the country. This would seem to have been an independent movement. However, nothing came of it. Mr. Fenwick left the country late in the autumn of 1645.

The latest appearance in this country of a copy of the Warwick patent, before Winthrop procured one from Mr. Hopkins' executor, was when it was produced before the commissioners of the united colonies at their meeting at Plymouth in September, 1648, at which time it was mentioned, as a thing not unknown, that this patent had been lately owned by the honorable committee of parliament, and equal respect and power given to it by them within the bounds therein mentioned as to the Massachusetts and Plymouth within their several limits, respectively.

The news of the restoration of King Charles II., reached Connecticut early in August, 1660. At the next session of the General Court, in October, the subject of addressing and petitioning the king was under consideration, but nothing was done about it. Massachusetts had not, and Connecticut in general followed her lead. Massachusetts did, at a special court in December, 1660, order that addresses be made to the king and parliament. A special session of the Connecticut general court was called to meet at Hartford February 14, 1661. On account of a severe snowstorm, not an unusual event at that season, or for some other reason, a quorum did not assemble to form

a court, and, therefore, there is no account of the meeting to be found in the secretary's book, though it is alluded to in the record of the session held a month later. It was the result of the consultation of those magistrates and deputies who did meet February 14th, "that it is necessary for this colony to make a speedy address to his majesty our sovereign lord Charles the second, king of England, Scotland, France, and Ireland, humbly to petition his majesty for his favor and for the continuance and confirmation of such privileges and liberties as are necessary for the comfortable settlement of this colony. They likewise resolved, that the deputies would commend it to their several towns, to consult and consider about what might be necessary in way of preparation thereunto, that at the next meeting of the general court might be considered and settled the suitable means to effect the same in a fit and honorable way."

At subsequent sessions the general court completed arrangements for presenting a petition to the king, and on the 7th of June, 1661, approved a draft of Instructions to Governor Winthrop as their agent, of which draft the following is an extract:

It is desired that you would be pleased to use all due means to procure a copy of the patent referring to these parts, granted unto those nobles and gentlemen whom Mr. Fenwick did represent in his act of sale to this colony. And in case the copy of this patent can by no means used be obtained, then you are de-

sired to advise with the counsel forementioned, [Lord Saye and Sele, the Earl of Manchester,[12] Lord Brooke, and others named] what to do in reference to the heirs of Mr. Fenwick for the regaining such sums as have been disbursed for the purchase of Jurisdiction Right.

And in case the forementioned patent can be procured, our desire is, that you would be pleased to consider both what privileges, rights, and immunities are therein granted, and to compare it with the copy of the Bay patent; and what is conducible in both to the well-being and future comfort of this colony our desire is may be inserted and comprehended in the patent granted and confirmed to this colony.

There was a clause in the draft which seems to have been canceled and something else substituted. The canceled clause read as follows:

But in case upon representation of our purchase and moneys expended upon it the heirs of Mr. Fenwick, or any other the patentees, do tender the confirmation of the patent (that we conceive we bought), we shall rest satisfied with that patent, provided it may be completed and the confirmation finished without further expense to this colony.

Now we cannot but believe that the committee

[12] The Earl of Manchester and Lord Saye and Sele had, in July, 1660, been appointed by the king members of a committee for plantation affairs, and in the following December members of the Council for Foreign Plantations. *Documents relative to the Colonial History of New York*, III, 36, 33.

which prepared these instructions was very well aware that the Warwick deed or patent conferred, and could confer, no power of government. Jurisdiction right could only come from the supreme power. It does not seem at all probable that a charter from the crown would have been granted before a colony was settled or immediately about to be established: it could not be known who should be named in it as the first officers. A charter may have been drafted, however. The New Haven Case Stated expressly says that a copy of a patent for Connecticut had been framed before any house was erected by the seaside from the fort to the Dutch, which yet was not signed and sealed by the last king (Charles I). There was an understanding with Fenwick in 1645, that he should procure a charter from the committee of parliament, which he failed to do. Bearing these things in mind we can better understand the instructions to Winthrop, the expressions in various papers about the purchase of jurisdiction right, and the reclamation from Fenwick's heirs of money paid therefor; for it cannot be pretended that the colony did not receive all that Fenwick purported to convey in his agreement of December 5, 1644, or that it was disturbed in the quiet enjoyment thereof by the patentees or any of them.

The description of the tract conveyed March 19, 1632, by the Earl of Warwick to Lord Saye and Sele and others is as follows: All that part of New England in America which lies and extends itself from a

L. of C.

river there called Narraganset river the space of forty leagues upon a straight line near the sea shore towards the southwest, west and by south, or west, as the coast lieth towards Virginia, accounting three English miles to the league; and also all and singular the lands and hereditaments whatsoever, lying and being within the lands aforesaid, north and south in latitude and breadth, and in length and longitude of and within all the breadth aforesaid, throughout the main lands there, from the western ocean to the south sea.

About three years after, that is to say, April 20, 1635, the Council established at Plymouth in the county of Devon for the planting, ordering, ruling and governing of New England, granted to James, Marquis of Hamilton, all that portion of the main lands of New England, beginning at the middle part of the mouth or entrance of the river of Connecticut in New England, from thence to proceed along the sea coast to the Narraganset river or harbor, there to be accounted about sixty miles, and so up the western arm of that river to the head thereof, and into the land northwestward till sixty miles be finished, and so to cross overland southwestwards to meet with the end of sixty miles to be accounted from the mouth of Connecticut up northwest.

Now the interference of these grants is so obvious that it is not necessary to look upon the map to discover it, and we cannot account for it by asserting the ignorance of the grantors as to the geography of New

England. The grant to the Marquis of Hamilton takes in the whole of Connecticut east of the river, with parts of Rhode Island and Massachusetts. The Marquis asserted his claim before the royal commissioners in 1664–5. The claim was again renewed in 1683, and also in 1697, by his son the Earl of Arran. At the last date, when the colony of Connecticut among other things pleaded the prior grant of the Earl of Warwick, Arran replied, according to Chalmers, "that when they produced a grant from the Plymouth company to the Earl of Warwick it should have an answer." Now, although the colony regarded itself as the successor, by purchase, of Warwick's grantees, we know that the patent was never formally assigned to the colony, nor did the document itself nor even an authenticated copy of it come into the possession of the colony, although Mr. Hopkins, in 1649, offered to make oath as to the truth of the copy by him presented before the commissioners of the united colonies. It could not be expected then that the colony would have the original deed from the Plymouth company to Warwick. There was no privity between the colony and the Earl. As the Plymouth company had been dissolved more than fifty years, Arran doubtless knew that the colony would be unable to shew the grant from the records of that company.

So much of the records of the Plymouth Council for New England as now remains are printed with the Proceedings of the American Antiquarian Society for

April 1867 and October 1875. It consists of transcripts more or less complete from the original records which are now lost. These extracts extend from the last of May, 1622, to June 29, 1623, and from November 4, 1631, to November 1, 1638. Under date of Saturday, the last of May, 1622, is this entry: "The patents already granted, to be confirmed, and order is given for patents to be drawn for the earl of Warwick and his associates, the lord Gorges, Sir Robert Mansell, Sir Ferd. Gorges." There was presented to the king, June 29, 1623, a plot of all the coasts and lands of New England, divided into twenty parts; but Connecticut does not appear upon the map reproduced in the Proceedings of the American Antiquarian Society for October, 1875, as having been allotted to any one, nor was the division then made confirmed.

Among the Winthrop Papers is a letter from John Humphrey,[13] afterwards one of the grantees named in the Warwick patent, dated London, December 9, 1630, and adressed to Isaac Johnson at Charlestown in New England, in which is this passage, "My lord of Warwick will take a patent of that place you writ of for himself, so we may be bold to do there as if it were our own." From another letter written three days later by the same to the same, printed in the same volume, it evidently appears that the southern part of New England was the place which both had

[13] Massachusetts Historical Society *Collections*, 3d Series, VI, 4.

in mind. We can get no information on the subject from the council records because of the hiatus from June 29, 1623 to November 4, 1631. These letters imply that, so far as the writer's knowledge extended, the Earl of Warwick had not taken out a patent for what is now Connecticut from the council of New England before December 12, 1630.

The council records have this memorandum under date of June 23, 1632: "The secretary is to bring against the next meeting a rough draught in paper of a patent for the E. of Warwick from the river of the Narrigants 10 leagues westward." At a meeting on the 26th of the same month: "The rough draught of a patent for the E. of Warwick was now read; his lordship upon hearing the same gave order that the grant should be unto Robert lord Rich and his associates A, B. &c. And it was agreed by the council that the limits of the said patent should be 30 English miles westward, and 50 miles into the land northward, provided it did not prejudice any other patent formerly granted." Now this was a portion of the territory which the Earl had in the month of March preceding granted to Lords Saye and Sele, Brooke, Rich, and others. Had it been for the whole of it, we might have supposed that this last mentioned patent,— of which we hear nothing further,— was intended as a confirmation of title to lands which had previously been granted informally to the Earl, and that the informality of the original grant by the council was

perhaps the reason why the Earl made no mention of the source of his title in his grant to Lord Saye and Sele, etc.

Whoever will examine the extant record of the Council for New England will not fail, I think, to come to the conclusion that its affairs were very loosely managed and that records were not kept of all the grants made. For the latter reason it appears to have been that on the eve of its dissolution the council, on the 3d of February, 1635, made new grants of all the coast of New England from the 40th degree of north latitude. From Hudson's River to New Haven fell to the Duke of Lenox; from New Haven to Connecticut River, to the Earl of Carlisle; from Connecticut River to Narragansett River, to the Marquis of Hamilton, and so on. The whole was divided, "saving and reserving to every one that hath any lawful grant of lands or plantations lawfully settled in the same the free holding and enjoying of his right with the liberties thereunto appertaining." Not only Connecticut was thus regranted, but Massachusetts also, which in 1628 had been granted to Roswell and his associates and had received in 1629 a royal charter from King Charles I. The object of this division seems to have been to cover all the territory embraced in the great patent of New England, if any had been ungranted or if any grants had been forfeited, so that no portion of it should lapse to the crown.[14]

[14] The grants which were made, or pretended to be made, in 1635, were the efforts of a number of the members of the council,

It has been suggested by a late writer,[15] that the Warwick patent might have been a pious fraud, but it is difficult to believe that the Earl of Warwick or Lord Saye and Sele and the rest of the nobles and gentlemen who were his grantees, not to speak of the Winthrops, Hooker and others, would have lent countenance to any fraud, even a pious one, if such a thing could be.

There are matters relating to the Warwick patent not easy to understand, and which I cannot clear up to entire satisfaction. Most of the difficulties are occasioned by the loss or imperfection of records; for some of the difficulties I hope that possible solutions have been suggested. Upon the whole, however, I am of the opinion that the Warwick patent or deed was one which the Earl had a right to give and did give. The legal presumptions are in its favor. The Earl was certainly in a position to obtain such a grant from the Council, of which he had been president. The authenticity of the patent seems to have been generally admitted by those who lived at the time. With exception of that by the Marquis of Hamilton to a portion of the territory, we hear of no other claim on

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to secure some part of the dying interest to themselves and posterity, in which they all failed. Hutchinson's *History of the Colony of Massachusetts Bay*, Boston, 1764, I, 314.

The great council of Plymouth had no power to transfer government to any. — Opinion of judges. Hutchinson's *History of the Colony of Massachusetts Bay*, I, 317.

[15] Prof. Johnston.

the part of any of the English nation. The patent was recognized by the commissioners of the united colonies. It seems to have been recognized by the committee of parliament in July, 1647,[16] and afterwards by King Charles II., who in his letter of April 23, 1664, to the colony, speaks of "the time when we renewed your charter."[17] The grantees showed their faith in the patent to the extent that they were willing to invest money in it and some of them proposed to settle within its limits.

[16] Winthrop's *History of New England*, II, 319.

[17] Trumbull's *History of Connecticut*, I, 523.

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